

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

TRAVELERS CASUALTY AND SURETY COMPANY  
OF AMERICA,

Plaintiff,

vs.

YOUNG CONSTRUCTION & PAVING, LLC; KAREN B.  
YOUNG; GORDON T. YOUNG; JEFFREY D. YOUNG;  
MONICA L. YOUNG; JOSEPH WELLS; TERRI  
WELLS; LUKE D. VANDER BLEEK; and JOAN L.  
VANDER BLEEK,

Defendants.

and

JOSEPH WELLS; TERRI WELLS; LUKE D. VANDER  
BLEEK; and JOAN L. VANDER BLEEK,

Counter-Plaintiffs/Third-Party Plaintiffs,

vs.

TRAVELERS CASUALTY AND SURETY COMPANY  
OF AMERICA,

Counter-Defendants,

and

TRISSEL, GRAHAM AND TOOLE, INC., a corporation,  
DANIEL CURRAN, and ROGER A. COLMARK,

Third-Party Defendants.

No. 8-CV-50008

**ANSWER, AFFIRMATIVE DEFENSE, COUNTERCLAIM,  
AND THIRD PARTY CLAIM**

NOW COME the Defendants, JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK, by RENO & ZAHM LLP, by Robert A. Fredrickson and Jack D. Ward, and for their Answer, Affirmative Defense, Counterclaim, and Third Party Claim, state as follows:

ANSWER

NOW COME the Defendants, JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK, by RENO & ZAHM LLP, by Robert A. Fredrickson and Jack D. Ward, and for their Answer to Plaintiff's Complaint, state as follows:

1. That the Defendants admit the allegations of Paragraph 1 of Plaintiffs' Complaint.
2. That the Defendants admit the allegations of Paragraph 2 of Plaintiffs' Complaint.
3. That the Defendants admit the allegations of Paragraph 3 of Plaintiffs' Complaint.
4. That the Defendants admit the allegations of Paragraph 4 of Plaintiffs' Complaint.
5. That the Defendants admit the allegations of Paragraph 5 of Plaintiffs' Complaint.
6. That the Defendants admit the allegations of Paragraph 6 of Plaintiffs' Complaint.

7. That the Defendants admit the allegations of Paragraph 7 of Plaintiffs' Complaint.

8. That the Defendants admit the allegations of Paragraph 8 of Plaintiffs' Complaint.

9. That the Defendants admit the allegations of Paragraph 9 of Plaintiffs' Complaint.

10. That the Defendants admit the allegations of Paragraph 10 of Plaintiffs' Complaint.

11. That the Defendants admit the allegations of Paragraph 11 of Plaintiffs' Complaint.

12. That the Defendants admit the allegations of Paragraph 12 of Plaintiffs' Complaint.

13. That the Defendants admit the allegations of Paragraph 13 of Plaintiffs' Complaint.

14. That the Defendants admit the allegations of Paragraph 14 of Plaintiffs' Complaint.

15. That the Defendants admit the allegations of Paragraph 15 of Plaintiffs' Complaint, and in further answering state that Young Construction requested Luke Vander Bleek and Joseph Wells and their respective spouses to indemnify Travelers as a condition to Travelers issuing the surety bond requested by Young Construction, and in so doing, the Travelers surety bond sales agent, Trissel, Graham and Toole, Inc., and specifically the agent, Daniel Curran, provided Defendants with a reviewed financial statement of condition

of Young Construction that Curran knew materially misrepresented the net worth/financial condition of Young Construction by overstating said net worth by the sum of \$3.8 million.

16. That the Defendants admit the allegations of Paragraph 16 of Plaintiffs' Complaint, but in further answering state that Travelers was aware through its broker and agent, Trissel, Graham and Tool, Inc. and Curran, that the Young Construction net worth was materially misstated and that thereby the risk to Luke Vander Bleek and Joseph Wells and their respective spouses was substantially and materially greater than the financial disclosure by Colmark on behalf of Young.

17. That the Defendants admit that the indemnity agreement states what is represented by the Plaintiffs in Paragraph 17 of Plaintiffs' Complaint, but said obligations were conditioned upon the Young reviewed statement presented by the CPA and the bond agent being accurate.

18. That the Defendants have insufficient knowledge to admit or deny the allegations of Paragraph 18 of Plaintiffs' Complaint and therefore demand strict proof thereof.

19. That the Defendants have insufficient knowledge to admit or deny the allegations of Paragraph 19 of Plaintiffs' Complaint and therefore demand strict proof thereof.

20. That the Defendants have insufficient knowledge to admit or deny the allegations of Paragraph 20 of Plaintiffs' Complaint and therefore demand strict proof thereof.

21. That the Defendants admit the allegations of Paragraph 21 of Plaintiffs' Complaint.

22. That the Defendants admit the allegations of Paragraph 22 of Plaintiffs' Complaint, and in further answering state that the underlying validity of the indemnity agreement is contested (see Counterclaim, Affirmative Defenses, and Third Party Complaint) and that indemnitors would have no obligation whatsoever if the indemnity agreement itself is invalid and unenforceable.

23. That the Defendants admit the allegations of Paragraph 23 of Plaintiffs' Complaint.

24. That the Defendants deny that the Plaintiffs are entitled to the indemnitors' books and records inasmuch as the underlying indemnity agreement is not enforceable.

25. That the Defendants have insufficient knowledge to admit or deny the allegations of Paragraph 25 of Plaintiffs' Complaint and therefore demand strict proof thereof.

26. That the Defendants have insufficient knowledge to admit or deny the allegations of Paragraph 26 of Plaintiffs' Complaint and therefore demand strict proof thereof.

27. That the Defendants admit the allegations of Paragraph 27 of Plaintiffs' Complaint.

#### COUNT I

28. That the Defendants admit that the indemnity agreement has certain obligations as claimed by the Plaintiffs but that the enforceability of said agreement is in question per the Affirmative Defenses, Counterclaim, and Third Party Complaint.

29. That the Defendants deny the allegations of Paragraph 29 of Count I of Plaintiffs' Complaint inasmuch as the agreement itself is unenforceable.

30. That the Defendants deny the allegations of Paragraph 30 of Count I of Plaintiffs' Complaint inasmuch as the agreement itself is unenforceable.

WHEREFORE, the Defendants pray:

1. That the Court enter an order granting judgment in favor of the Defendants with costs to the Plaintiffs;

2. That the Court determine that the claimed indemnity agreement is void and unenforceable;

3. That the Court grant such further and other relief as is fair and equitable.

## COUNT II

28. That the Defendants admit that the indemnity agreement has certain obligations as claimed by the Plaintiffs but that the enforceability of said agreement is in question per the Affirmative Defenses, Counterclaim, and Third Party Complaint.

29. That the Defendants deny the allegations of Paragraph 29 of Count II of Plaintiffs' Complaint inasmuch as the agreement itself is unenforceable.

30. That the Defendants deny the allegations of Paragraph 30 of Count II of Plaintiffs' Complaint inasmuch as the agreement itself is unenforceable.

31. That the Defendants deny the allegations of Paragraph 31 of Count II of Plaintiffs' Complaint inasmuch as the agreement itself is unenforceable.

32. That the Defendants deny the allegations of Paragraph 32 of Count II of Plaintiffs' Complaint inasmuch as the agreement itself is unenforceable.

33. That the Defendants deny the allegations of Paragraph 33 of Count II of Plaintiffs' Complaint.

34. That the Defendants deny the allegations of Paragraph 34 of Count II of Plaintiffs' Complaint.

35. That the Defendants deny the allegations of Paragraph 35 of Count II of Plaintiffs' Complaint.

WHEREFORE, the Defendants pray:

1. That the Court enter an order granting judgment in favor of the Defendants with costs to the Plaintiffs;

2. That the Court determine that the claimed indemnity agreement is void and unenforceable;

3. That the Court grant such further and other relief as is fair and equitable.

### COUNT III

28. That the Defendants admit that the indemnity agreement has certain obligations as claimed by the Plaintiffs but that the enforceability of said agreement is in question per the Affirmative Defenses, Counterclaim, and Third Party Complaint.

29. That the Defendants admit that they have made the claim set forth herein but deny that the Defendants are obligated to perform under the indemnity agreement for the reasons set forth in this Answer, the Affirmative Defenses, the Counterclaim, and the Third Party Complaint.

30. That the Defendants admit that they have made the claim set forth herein but deny that the Defendants are obligated to perform under the indemnity agreement for the

reasons set forth in this Answer, the Affirmative Defenses, the Counterclaim, and the Third Party Complaint.

31. That the Defendants admit that Plaintiffs have made the claim set forth but deny that the Defendants are obligated to perform under the indemnity agreement for the reasons set forth in this Answer, the Affirmative Defenses, the Counterclaim, and the Third Party Complaint.

32. That the Defendants admit that they have made the claim set forth herein but deny that the Defendants are obligated to perform under the indemnity agreement for the reasons set forth in this Answer, the Affirmative Defenses, the Counterclaim, and the Third Party Complaint.

33. That the Defendants deny the allegations of Paragraph 33 of Count III of Plaintiffs' Complaint.

WHEREFORE, the Defendants pray:

1. That the Court enter an order granting judgment in favor fo the Defendants with costs to the Plaintiffs;

2. That the Court determine that the claimed indemnity agreement is void and unenforceable;

3. That the Court grant such further and other relief as is fair and equitable.

#### COUNT IV

28. That the Defendants admit that the indemnity agreement has certain obligations as claimed by the Plaintiffs but that the enforceability of said agreement is in question per the Affirmative Defenses, Counterclaim, and Third Party Complaint.



29. That the Defendants admit that they have made the claim set forth herein but deny that the Defendants are obligated to perform under the indemnity agreement for the reasons set forth in this Answer, the Affirmative Defenses, the Counterclaim, and the Third Party Complaint.

WHEREFORE, the Defendants pray:

1. That the Court enter an order granting judgment in favor of the Defendants with costs to the Plaintiffs;
2. That the Court determine that the claimed indemnity agreement is void and unenforceable;
3. That the Court grant such further and other relief as is fair and equitable.

#### AFFIRMATIVE DEFENSE

NOW COME the Defendants, JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK, by RENO & ZAHM LLP, by Robert A. Fredrickson and Jack D. Ward, and for their Affirmative Defense to Plaintiff's Complaint, state and allege as follows:

1. That JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK all reside within the United States District Court, Northern District of Illinois, Western Division, and are the individuals referred to as the Defendants in case number 08-CV-50008, and are the signatories on the indemnity agreement referred to in said Complaint.
2. That the Counter-Defendant, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, is a company that issued the surety bond in question and is the

insurance company involved in the bonding, surety on the bond, and indemnity on the bond with regard to Young Construction and Paving, LLC and specifically the Westar project related thereto.

3. That the Third-Party Defendant, TRISSEL, GRAHAM AND TOOLE, INC., is a company having its principal place of business at 228 Emerson Place, Suite 200, Davenport, Iowa 52801, which agency was the authorized broker and agent for Travelers Insurance Company relative to all aspects of the procurement and issuance of the Travelers surety bond on the Westar/Young Construction project.

4. That DANIEL CURRAN was an agent and employee of Trissel, Graham and Toole, Inc. and as such functioned as the contact agent and broker relative to procurement from Travelers of the Young bond, and in so doing, Daniel Curran was the agent for Trissel, Graham and Toole, Inc. relative to all Travelers requirements, including indemnities, obtained from the Counter-Plaintiffs as part of the surety bonding transaction involving Young Construction on the Westar project.

5. That Third-Party Defendant, ROGER A. COLMARK, is a private certified public accountant performing accounting services in the City of Sterling, State of Illinois, and specifically with regard to Young Construction and Paving, LLC.

6. That Roger Colmark offered an accounting opinion as to the reliability of a certain statement reviewed by him of Young Construction which contained material errors and omissions that if disclosed would have resulted in a change of the represented net worth of Young Construction and Paving from \$750,000 to a negative insolvent position of in excess of \$3 million.

7. That attached hereto as Exhibit 1 is the letter of Colmark representation and attached as Exhibit 2 is the CPA reviewed financial statement of Young Construction which were the disclosures relied upon by Luke Vander Bleek and Joseph Wells.

8. That the representations in said reviewed statement were false and incorrect in one or more of the following respects:

- (a) That said statement omitted disclosure of a bank loan;
- (b) That said statement omitted disclosure of a customer prepayment less than unpaid costs on a contract that had not been completed;
- (c) That said statement incorrectly included real estate not owned by the company; and
- (d) That said statement overstated accounts receivable.

9. That if the errors and omissions set forth in 8(a) through (d) were factored into the Young reviewed statement, there would be a resulting change of a negative \$3,961,000.

10. Said statements were specifically presented to induce the reliance of both Luke Vander Bleek and Joseph Wells to procure loans from Luke Vander Bleek and Joseph Wells to the company of \$800,000, for Luke Vander Bleek and Joseph Wells to subordinate their collateral position on loans, including an additional \$200,000 loaned by Luke Vander Bleek prior to the presentment of the reviewed statement and further to induce Luke Vander Bleek and Joseph Wells and their respective spouses with the knowledge of Daniel Curran to rely and therefore indemnify Travelers Insurance relative to a certain surety bond that Travelers issued on the Westar/Young Construction and Paving, LLC contract.

11. That jurisdiction on the Counterclaim/Third Party Claim is based on diversity with regard to Trissel, Graham and Toole, Inc. and based on Rule 14(a) supplemental jurisdiction inasmuch as said claims, while lacking federal question or diversity jurisdiction are part and parcel of the original claims asserted herein by Travelers for materially relevant to the damages reasonably occurring as a result of the construction default by Young Construction, surety bond obligations of Travelers by virtue of the default, and/or the additional sums lost from the loan transactions and subordination of security suffered by Vander Bleek and Wells as a result of the Young non-performance of the Westar contract.

WHEREFORE, the Defendants pray:

1. That the Court enter an order granting judgment in favor of the Defendants with costs to the Plaintiffs;
2. That the Court determine that the claimed indemnity agreement is void and unenforceable;
3. That the Court grant such further and other relief as is fair and equitable.

#### COUNTERCLAIM

NOW COME the Defendants, JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK, by RENO & ZAHM LLP, by Robert A. Fredrickson and Jack D. Ward, and for their Counterclaim against the Plaintiff/ Counter-Defendant, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, state and allege as follows:

1. That JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK all reside within the United States District Court, Northern District of Illinois, Western Division, and are the individuals referred to as the Defendants in case number 08-CV-50008, and are the signatories on the indemnity agreement referred to in said Complaint.

2. That the Counter-Defendant, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, is a company that issued the surety bond in question and is the insurance company involved in the bonding, surety on the bond, and indemnity on the bond with regard to Young Construction and Paving, LLC and specifically the Westar project related thereto.

3. That the Third Party Defendant, TRISSEL, GRAHAM AND TOOLE, INC., is a company having its principal place of business at 228 Emerson Place, Suite 200, Davenport, Iowa 52801, which agency was the authorized broker and agent for Travelers Insurance Company relative to all aspects of the procurement and issuance of the Travelers surety bond on the Westar/Young Construction project.

4. That DANIEL CURRAN was an agent and employee of Trissel, Graham and Toole, Inc. and as such functioned as the contact agent and broker relative to procurement from Travelers of the Young bond, and in so doing, Daniel Curran was the agent for Trissel, Graham and Toole, Inc. relative to all Travelers requirements, including indemnities, obtained from the Counter-Plaintiffs as part of the surety bonding transaction involving Young Construction on the Westar project.

5. That the Third Party Defendant, ROGER A. COLMARK, is a private certified public accountant performing accounting services in the City of Sterling, State of Illinois, and specifically with regard to Young Construction and Paving, LLC.

6. That Roger Colmark offered an accounting opinion as to the reliability of a certain statement reviewed by him of Young Construction which contained material errors and omissions that if disclosed would have resulted in a change of the represented net worth of Young Construction and Paving from \$750,000 to a negative insolvent position of in excess of \$3 million.

7. That attached hereto as Exhibit 1 is the letter of representation and attached as Exhibit 2 is the reviewed financial statement of Young Construction which were the disclosures relied upon by Luke Vander Bleek and Joseph Wells.

8. That the representations in said reviewed statement were false and incorrect in one or more of the following respects:

- (a) That said statement omitted disclosure of a bank loan;
- (b) That said statement omitted disclosure of a customer prepayment less than unpaid costs on a contract that had not been completed;
- (c) That said statement incorrectly included real estate not owned by the company; and
- (d) That said statement overstated accounts receivable.

9. That if the errors and omissions set forth in 8(a) through (d) were factored into the Young reviewed statement, there would be a resulting change of a negative \$3,961,000.

10. Said statements were specifically presented to induce the reliance of both Luke Vander Bleek and Joseph Wells to procure loans from Luke Vander Bleek and Joseph Wells to the company of \$800,000, for Luke Vander Bleek and Joseph Wells to subordinate their collateral position on loans, including an additional \$200,000 loaned by Luke Vander Bleek prior to the presentment of the reviewed statement and further to induce Luke Vander Bleek and Joseph Wells and their respective spouses with the knowledge of Daniel Curran to rely and therefore indemnify Travelers Insurance relative to a certain surety bond that Travelers issued on the Westar/Young Construction and Paving, LLC contract.

11. That jurisdiction on the Counterclaim/Third Party Claim is based on diversity with regard to Trissel, Graham and Toole, Inc. and based on Rule 14(a) supplemental jurisdiction inasmuch as said claims, while lacking federal question or diversity jurisdiction are part and parcel of the original claims asserted herein by Travelers and are materially relevant to the damages reasonably occurring as a result of the construction default by Young Construction, surety bond obligations of Travelers by virtue of the default, and/or the additional sums lost from the loan transactions and subordination of collateral suffered by Vander Bleek and Wells as a result of the Young non-performance of the Westar contract.

WHEREFORE, the Defendant/Counter-Plaintiffs pray:

1. That the Court enter an order granting judgment in favor of the Defendants with costs to the Plaintiffs;
2. That the Court determine that the claimed indemnity agreement is void and unenforceable;

3. That the Court grant such further and other relief as is fair and equitable.

THIRD-PARTY CLAIM

COUNT I

NOW COME the Defendants/Third-Party Plaintiffs, JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK, by RENO & ZAHM LLP, by Robert A. Fredrickson and Jack D. Ward, and for their Third-Party Claim against the Third-Party Defendants, TRISSEL, GRAHAM AND TOOLE, INC., a corporation, and DANIEL CURRAN, state and allege as follows:

1. That JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK all reside within the United States District Court, Northern District of Illinois, Western Division, and are the individuals referred to as the Defendants in case number 08-CV-50008, and are the signatories on the indemnity agreement referred to in said Complaint.

2. That the Counter-Defendant, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, is a company that issued the surety bond in question and is the insurance company involved in the bonding, surety on the bond, and indemnity on the bond with regard to Young Construction and Paving, LLC and specifically the Westar project related thereto.

3. That the Third-Party Defendant, TRISSEL, GRAHAM AND TOOLE, INC., is a company having its principal place of business at 228 Emerson Place, Suite 200, Davenport, Iowa 52801, which agency was the authorized broker and agent for Travelers



Insurance Company relative to all aspects of the procurement and issuance of the Travelers surety bond on the Westar/Young Construction project.

4. That DANIEL CURRAN was an agent and employee of Trissel, Graham and Toole, Inc. and as such functioned as the contact agent and broker relative to procurement from Travelers of the Young bond, and in so doing, Daniel Curran was the agent for Trissel, Graham and Toole, Inc. relative to all Travelers requirements, including indemnities, obtained from the Counter-Plaintiffs as part of the surety bonding transaction involving Young Construction on the Westar project.

5. That Third-Party Defendant, ROGER A. COLMARK, is a private certified public accountant performing accounting services in the City of Sterling, State of Illinois, and specifically with regard to Young Construction and Paving, LLC.

6. That Roger Colmark offered an accounting opinion as to the reliability of a certain statement reviewed by him of Young Construction which contained material errors and omissions that if disclosed would have resulted in a change of the represented net worth of Young Construction and Paving from \$750,000 to a negative insolvent position of in excess of \$3 million.

7. That attached hereto as Exhibit 1 is the letter of representation and attached as Exhibit 2 is the reviewed financial statement of Young Construction which were the disclosures relied upon by Luke Vander Bleek and Joseph Wells.

8. That the representations in said reviewed statement were false and incorrect in one or more of the following respects:

(a) That said statement omitted disclosure of a bank loan;

- (b) That said statement omitted disclosure of a customer prepayment less than unpaid costs on a contract that had not been completed;
- (c) That said statement incorrectly included real estate not owned by the company; and
- (d) That said statement overstated accounts receivable.

9. That if the errors and omissions set forth in 8(a) through (d) were factored into the Young reviewed statement, there would be a resulting change of a negative \$3,961,000.

10. Said statements were specifically presented to induce the reliance of both Luke Vander Bleek and Joseph Wells to procure loans from Luke Vander Bleek and Joseph Wells to the company of \$800,000, for Luke Vander Bleek and Joseph Wells to subordinate their collateral position on loans, including an additional \$200,000 loaned by Luke Vander Bleek prior to the presentment of the reviewed statement and further to induce Luke Vander Bleek and Joseph Wells and their respective spouses with the knowledge of Daniel Curran to rely and therefore indemnify Travelers Insurance relative to a certain surety bond that Travelers issued on the Westar/Young Construction and Paving, LLC contract.

11. Said statements were specifically presented to induce the reliance of both Luke Vander Bleek and Joseph Wells to procure loans from Luke Vander Bleek and Joseph Wells to the company of \$800,000, for Luke Vander Bleek and Joseph Wells to subordinate their collateral position on loans, including an additional \$200,000 loaned by Luke Vander Bleek prior to the presentment of the reviewed statement and further to induce Luke Vander Bleek and Joseph Wells and their respective spouses with the

knowledge of Daniel Curran to rely and therefore indemnify Travelers Insurance relative to a certain surety bond that Travelers issued on the Westar/Young Construction and Paving, LLC contract.

12. That jurisdiction on the Counterclaim/Third Party Claim is based on diversity with regard to Trissel, Graham and Toole, Inc. and based on Rule 14(a) supplemental jurisdiction inasmuch as said claims, while lacking federal question or diversity jurisdiction are part and parcel of the original claims asserted herein by Travelers for materially relevant to the damages reasonably occurring as a result of the construction default by Young Construction, surety bond obligations of Travelers by virtue of the default, and/or the additional sums lost from the loan transactions and subordination of security suffered by Vander Bleek and Wells as a result of the Young non-performance of the Westar contract.

WHEREFORE, the Defendant/Counter-Plaintiffs pray:

1. That the Court determine that the claimed indemnity agreement is void and unenforceable; or alternatively enter judgment against Travelers, Trissel, and Curran in the sum of the indemnity, namely \$1 million;
2. That the Court grant such further and other relief as is fair and equitable.

## COUNT II

NOW COME the Defendants/Third-Party Plaintiffs, JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK, by RENO & ZAHM LLP, by Robert A. Fredrickson and Jack D. Ward, and for their Third-Party Claim against the Third-Party Defendant, ROGER A. COLMARK, state and allege as follows:

1. That JOSEPH WELLS, TERRI WELLS, LUKE D. VANDER BLEEK, and JOAN L. VANDER BLEEK all reside within the United States District Court, Northern District of Illinois, Western Division, and are the individuals referred to as the Defendants in case number 08-CV-50008, and are the signatories on the indemnity agreement referred to in said Complaint.

2. That the Counter-Defendant, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, is a company that issued the surety bond in question and is the insurance company involved in the bonding, surety on the bond, and indemnity on the bond with regard to Young Construction and Paving, LLC and specifically the Westar project related thereto.

3. That the Third-Party Defendant, TRISSEL, GRAHAM AND TOOLE, INC., is a company having its principal place of business at 228 Emerson Place, Suite 200, Davenport, Iowa 52801, which agency was the authorized broker and agent for Travelers Insurance Company relative to all aspects of the procurement and issuance of the Travelers surety bond on the Westar/Young Construction project.

4. That DANIEL CURRAN was an agent and employee of Trissel, Graham and Toole, Inc. and as such functioned as the contact agent and broker relative to procurement from Travelers of the Young bond, and in so doing, Daniel Curran was the agent for Trissel, Graham and Toole, Inc. relative to all Travelers requirements, including indemnities, obtained from the Counter-Plaintiffs as part of the surety bonding transaction involving Young Construction on the Westar project.

5. That Third-Party Defendant, ROGER A. COLMARK, is a private certified public accountant performing accounting services in the City of Sterling, State of Illinois, and specifically with regard to Young Construction and Paving, LLC.

6. That Roger Colmark offered an accounting opinion as to the reliability of a certain statement reviewed by him of Young Construction which contained material errors and omissions that if disclosed would have resulted in a change of the represented net worth of Young Construction and Paving from \$750,000 to a negative insolvent position of in excess of \$3 million.

7. That attached hereto as Exhibit 1 is the letter of representation and attached as Exhibit 2 is the reviewed financial statement of Young Construction which were the disclosures relied upon by Luke Vander Bleek and Joseph Wells.

8. That the representations in said reviewed statement were false and incorrect in one or more of the following respects:

- (a) That said statement omitted disclosure of a bank loan;
- (b) That said statement omitted disclosure of a customer prepayment less than unpaid costs on a contract that had not been completed;
- (c) That said statement incorrectly included real estate not owned by the company; and
- (d) That said statement overstated accounts receivable.

9. That if the errors and omissions set forth in 8(a) through (d) were factored into the Young reviewed statement, there would be a resulting change of a negative \$3,961,000.

10. Said statements were specifically presented to induce the reliance of both Luke Vander Bleek and Joseph Wells to procure loans from Luke Vander Bleek and Joseph Wells to the company of \$800,000, for Luke Vander Bleek and Joseph Wells to subordinate their collateral position on loans, including an additional \$200,000 loaned by Luke Vander Bleek prior to the presentment of the reviewed statement and further to induce Luke Vander Bleek and Joseph Wells and their respective spouses with the knowledge of Daniel Curran to rely and therefore indemnify Travelers Insurance relative to a certain surety bond that Travelers issued on the Westar/Young Construction and Paving, LLC contract.

11. Said statements were specifically presented to induce the reliance of both Luke Vander Bleek and Joseph Wells to procure loans from Luke Vander Bleek and Joseph Wells to the company of \$800,000, for Luke Vander Bleek and Joseph Wells to subordinate their collateral position on loans, including an additional \$200,000 loaned by Luke Vander Bleek prior to the presentment of the reviewed statement and further to induce Luke Vander Bleek and Joseph Wells and their respective spouses with the knowledge of Daniel Curran to rely and therefore indemnify Travelers Insurance relative to a certain surety bond that Travelers issued on the Westar/Young Construction and Paving, LLC contract.

12. That jurisdiction on the Counterclaim/Third Party Claim is based on diversity with regard to Trissel, Graham and Toole, Inc. and based on Rule 14(a) supplemental jurisdiction inasmuch as said claims, while lacking federal question or diversity jurisdiction are part and parcel of the original claims asserted herein by Travelers for materially relevant to the damages reasonably occurring as a result of the construction default by

Young Construction, surety bond obligations of Travelers by virtue of the default, and/or the additional sums lost from the loan transactions and subordination of security suffered by Vander Bleek and Wells as a result of the Young non-performance of the Westar contract.

12. That as a direct and proximate cause of the negligence of Roger A. Colmark, the Plaintiffs, Luke Vander Bleek and Joseph Wells, suffered damages pursuant to the indemnity agreement of \$1 million and pursuant to the loss of loaned funds to Young in the amount of \$1 million.

WHEREFORE, the Defendant/Third-Party Plaintiffs pray:

1. That the Court enter an order granting judgment in favor of Luke Vander Bleek and Joseph Wells against Roger A. Colmark in the sum of \$2,000,000 plus costs of suit;

2. That the Court grant such further and other relief as is fair and equitable.

Dated this 15<sup>th</sup> day of February, 2008.

JOSEPH WELLS; TERRI WELLS; LUKE  
D. VANDER BLEEK; and JOAN L.  
VANDER BLEEK

By: RENO & ZAHM LLP

**DEFENDANTS, COUNTER-PLAINTIFFS,  
AND THIRD PARTY PLAINTIFFS DEMAND  
TRIAL BY JURY ON ALL COUNTS**

By:   
Robert A. Fredrickson

RENO & ZAHM LLP  
BY: ROBERT A. FREDRICKSON, #00868469  
JACK D. WARD, #3125783  
MICHAEL J. SCHIRGER, #6290691  
2902 McFarland Road  
Perry Creek Plaza, Suite 400  
Rockford, IL 61107  
(815) 987-4050

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

TRAVELERS CASUALTY AND SURETY COMPANY OF  
AMERICA,

Plaintiff,

vs.

No. 8-CV-50008

YOUNG CONSTRUCTION & PAVING, LLC; KAREN B.  
YOUNG; GORDON T. YOUNG; JEFFREY D. YOUNG;  
MONICA L. YOUNG; JOSEPH WELLS; TERRI WELLS; LUKE  
D. VANDER BLEEK; and JOAN L. VANDER BLEEK,

Defendants.

and

JOSEPH WELLS; TERRI WELLS; LUKE D. VANDER BLEEK;  
and JOAN L. VANDER BLEEK,

Counter-Plaintiffs/Third-Party Plaintiffs,

vs.

TRAVELERS CASUALTY AND SURETY COMPANY OF  
AMERICA,

Counter-Defendants,

and

TRISSEL, GRAHAM AND TOOLE, INC., a corporation,  
DANIEL CURRAN, and ROGER A. COLMARK,

Third-Party Defendants.


**DEMAND FOR A JURY**

The Defendants, Counter-Plaintiffs, and Third-Party Plaintiffs in the above-entitled cause demand a jury for the trial of said cause.



JOSEPH WELLS; TERRI WELLS; LUKE D.  
VANDER BLEEK; and JOAN L. VANDER  
BLEEK

By: RENO & ZAHM LLP

By:   
Robert A. Fredrickson

RENO & ZAHM LLP  
BY: ROBERT A. FREDRICKSON, #00868469  
JACK D. WARD, #3125783  
MICHAEL J. SCHIRGER, #6290691  
2902 McFarland Road  
Perry Creek Plaza, Suite 400  
Rockford, IL 61107  
(815) 987-4050

*Roger A. Colmark*

CERTIFIED PUBLIC ACCOUNTANT  
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Independent Accountant's Report

To the Partners  
Young Construction & Paving, L.L.C.  
Sterling, Illinois

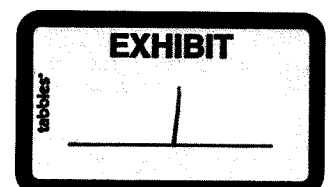
We have reviewed the accompanying balance sheet of Young Construction and Paving, L.L.C., as of December 31, 2006, and the related statements of income, partners' equity, and cash flows for the year then ended, in accordance with standards established by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the owners of Young Construction and Paving, L.L.C.

A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

*Roger A. Colmark, CPA*

Sterling, Illinois  
May 2, 2007

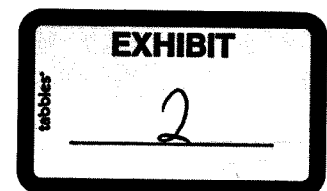


Young Construction & Paving, L.L.C.  
Balance Sheet  
December 31, 2006 and 2005

## Statement 1

<u>Assets</u>	<u>2006</u>	<u>2005</u>
<u>Current Assets</u>		
Cash on hand and in bank	\$ 0.00	\$ (3,262.59)
Accounts receivable (Note 2)	890,885.90	1,468,353.03
Note receivable - employee	13,287.49	16,328.70
Retainage	460,465.12	152,568.11
Excess profit over cost on contracts in progress	53,225.00	0.00
Advances and deposits	5,180.00	3,300.00
Total Current Assets	\$ 1,223,043.51	\$ 1,637,317.25
<u>Capital Assets</u>		
Land, Buildings & Equipment (Note 3)	1,811,206.86	1,344,689.45
Total Assets	\$ 2,834,250.37	\$ 2,982,006.70
	=====	=====
<u>Liabilities and Partners' Equity</u>		
<u>Current Liabilities</u>		
Accounts payable	\$ 1,191,041.33	\$ 1,393,229.97
Accrued expenses	53,096.21	47,023.60
Note payable, current portion (Note 4)	465,401.31	762,574.03
Total Current Liabilities	\$ 1,709,538.85	\$ 2,202,827.60
<u>Long-term Liabilities</u>		
Note payable, long-term portion (Note 4)	416,166.86	566,739.44
Total liabilities	\$ 2,125,705.71	\$ 2,769,567.04
	=====	=====
<u>Partners' Equity</u>		
Partner's capital - Jeff Young	\$ 326,023.89	\$ 67,122.24
Partner's capital - Gordon Young	382,520.77	145,317.42
Total partners' equity	\$ 708,544.66	\$ 212,439.66
	=====	=====
Total Liabilities and Capital	\$ 2,834,250.37	\$ 2,982,006.70
	=====	=====

See Accountants' Review Report.



## Statement 2

Young Construction & Paving, L.L.C.  
Statement of Partners' Equity  
For the Year Ended December 31, 2006 and 2005

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	<u>2006</u>	<u>2005</u>
Partners' Equity, January 1.	\$ 212,439.66	\$ 908,058.60
Net Income (Loss) (Statement 3)	426,779.79	(445,214.40)
Additions and (distributions)	69,325.21	(250,404.54)
	<hr/>	<hr/>
Partners' Equity, December 31, (Statement 1)	\$ 708,544.66	\$ 212,439.66
	<hr/>	<hr/>

See Accountants' Review Report

## Statement 3

Young Construction & Paving, L.L.C.  
Statement of Income  
For the Year Ended December 31, 2006 and 2005

	<u>2006</u>	<u>2005</u>
Sales	\$ 6,780,184.72	\$ 5,962,079.53
Cost of Sales (Schedule A)	<u>6,059,839.20</u>	<u>5,858,623.99</u>
Gross Profit	\$ <u>720,345.52</u>	\$ <u>305,455.54</u>
Operating Expenses:		
Advertising	\$ 229.13	\$ 1,255.52
Administrative expense	0.00	4,118.21
Bad debts	0.00	100,000.00
Bank Charges	49.52	4,813.74
Depreciation	224,426.84	147,987.83
Freight and delivery	0.00	5,037.77
Insurance	3,300.74	0.00
Miscellaneous	0.00	321.12
Office expense	28.22	13,673.16
Other fees	40.22	0.00
Professional fees	6,778.00	23,544.18
Repairs and maintenance	0.00	10,921.64
Supplies	12,424.23	3,365.42
Telephone	0.00	17,642.98
Travel and entertainment	0.00	8,262.70
Utilities	703.18	16,452.37
Wages	747.70	297,334.54
Total Operating Expense	\$ <u>248,723.78</u>	\$ <u>654,531.18</u>
Income (Loss) from Operations	\$ 471,621.74	\$ (349,075.64)
Other Income and (Expenses)		
Gain (Loss) on sale	\$ (16,609.55)	\$ 0.00
Interest income	0.00	1,000.00
Other income	1.00	4,314.73
Interest expense	(28,233.40)	(101,453.49)
Total other income and expenses	\$ <u>(44,841.95)</u>	\$ <u>(96,138.76)</u>
Net Income (Loss) (Statement 2)	\$ <u>426,779.79</u>	\$ <u>(445,214.40)</u>

See Accountants' Review Report.

## Statement 4

Young Construction & Paving, L.L.C.  
Statement of Cash Flows  
For the Year Ended December 31, 2006 and 2005

	<u>2006</u>	<u>2005</u>
<b>Cash flows from operating activities:</b>		
Net Income (Loss)	\$ 426,779.79	\$ (445,214.40)
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	\$ 224,426.84	\$ 147,887.83
Loss on sale of equipment	16,609.55	0.00
(Increase) decrease in accounts receivable	777,487.13	1,186,118.07
(Increase) decrease on estimated gross profit	(53,225.00)	0.00
(Increase) decrease in note receivable	3,041.21	5,885.93
(Increase) decrease in retainage	(307,867.01)	(152,598.11)
(Increase) decrease in advances & deposits	(1,880.00)	1,305.44
Increase (decrease) in accounts payable	(202,188.64)	339,778.38
Increase (decrease) in accrued expenses	8,072.61	(23,909.58)
Total Adjustments	\$ 462,456.69	\$ 1,504,547.96
Net cash provided by operations	\$ 889,236.48	\$ 1,059,333.56
<b>Cash flows from investing activities:</b>		
Proceeds from sale of equipment	47,394.01	0.00
Purchase of property, plant & equipment	(554,947.81)	(884,845.38)
Partners additions and (disbursements)	69,325.21	(250,404.54)
<b>Cash flows from financing activities:</b>		
Increase (decrease) in notes	(447,745.30)	142,379.49
Net decrease in cash	\$ 3,262.59	\$ 88,883.13
Cash at beginning of year	(3,262.59)	(89,925.72)
Cash at end of year (Statement 1)	\$ (0.00)	\$ (3,262.59)

See Accountants' Review Report.

## Schedule A

Young Construction & Paving, LLC  
 Schedule of Cost of Sales  
 For the Year Ended December 31, 2006 and 2005

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	<u>2006</u>	<u>2005</u>
<u>Cost of Sales</u>		
Building supplies	\$ 1,654,230.49	\$ 2,829,899.84
Equipment Rent	530,459.11	301,001.78
Insurance	0.00	246,204.01
Contract Labor	1,337,476.17	1,243,083.12
Overhead Expense	194,519.52	0.00
Repairs and Maintenance	0.00	36,322.24
Supplies	0.00	5,328.57
Wages	2,343,153.91	1,194,784.43
	<hr/>	<hr/>
Total cost of sales (Statement 3)	\$ <u><u>6,058,839.20</u></u>	\$ <u><u>5,656,623.99</u></u>

See Accountants' Review Report.

Young Construction & Paving, L.L.C.  
Notes to Financial Statements  
For Year Ended December 31, 2006

**Note 1: Summary of Significant Accounting Policies**

***Nature of Operations.***

Young Construction & Paving, LLC is engaged in the construction of buildings.

***Basis of Financial Statement Presentation.***

The company prepares its financial statements on the accrual basis of accounting

***Inventories.***

Inventories are valued at the lower of cost or market. Cost is generally determined on a first-in first-out basis.

***Property, Plant, and Equipment.***

Property, plant and equipment are recorded at cost less depreciation and amortization. Depreciation and amortization are primarily accounted for on the straight-line method based on estimated useful lives. Betterments and large renewals which extend the life of the asset are capitalized whereas maintenance and repairs and small renewals are expensed as incurred.

***Income Taxes.***

This company operates as a limited liability company (LLC) and therefore all state and federal income taxes are paid by the shareholder on their personal return.

***Estimates.***

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts and expenses during the reporting period. Actual results could differ from those estimates.

**Note 2: Accounts Receivable**

Accounts receivable is comprised of the following:

Construction Projects	\$	690,885.90
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Credit is extended to customers only after an evaluation of the customer's financial condition and generally, collateral is not required.



Young Construction & Paving, L.L.C.  
Notes to Consolidated Financial Statements  
For Year Ended December 31, 2008

Note 3: Property, Plant, and Equipment

Property, plant and equipment is comprised of the following:

Building & Improvements	\$ 521,139.54
Equipment	1,526,406.66
Total	<u>\$ 2,047,546.20</u>
Less: Accumulated Depreciation	<u>(436,339.34)</u>
Net property, plant & equipment	<u>\$ 1,611,206.86</u>

Note 4: Notes Payable

Notes payable consists of the following:

	<u>Current</u>	<u>Long Term</u>	<u>Total</u>
Sauk Valley Bank Interest only payments at 8%. Loan matures 6/20/08. Loan is secured by inventory and accounts receivable.	\$ 368,972.56	\$ 0.00	\$ 368,972.56
Caterpillar Financial Monthly payments are \$980.38 at 2.86%. Loan is secured by Cat Skid Loader	11,163.00	9,852.65	21,015.65
Huntington Nat'l Bank	13,070.75	0.00	13,070.75
Citicapital Monthly payments are \$2,689.65 at 8.58% interest. Loan matures 6/7/08. Loan is secured with excavator and drum roller	20,756.00	113,382.20	134,138.20
Sauk Valley Bank Monthly payments are \$2,240.19 at 7.5% interest. Loan matures 5/7/11. Loan is secured with real estate and building in Emerson	9,282.00	225,688.45	234,930.45
Marshall Equipment Purchase of three dump trailers	9,000.00	20,600.00	29,600.00
Metrobank Monthly payments are \$788.32 at 7.25%. Loan is secured by 1999 Peterbilt tractor.	8,523.00	4,387.87	12,910.87
Citi Corp Monthly payments are \$2,689.65 at 8.58%. Loan is secured by roller and mack truck	<u>26,864.00</u>	<u>42,275.69</u>	<u>68,928.69</u>
Total Notes Payable	<u>\$ 455,401.31</u>	<u>\$ 416,166.86</u>	<u>\$ 881,568.17</u>

Young Construction & Paving, L.L.C.  
Notes to Consolidated Financial Statements  
For Year Ended December 31, 2006

**Note 5: Fair Values of Financial Instruments**

The following methods and assumptions were used to estimate the fair value of financial instruments:

*Cash and Cash Equivalents.*

The carrying amount reported in the balance sheet for cash and cash equivalents approximates its fair value.

*Accounts Receivable and Accounts Payable.*

The carrying amount of accounts receivable and accounts payable in the balance sheet approximates fair value.

*Short-Term and Long-Term Debt.*

The carrying amount of the revolving credit facility approximates fair value.

## Schedule 1a

Young Construction & Paving, L.L.C.  
Contracts Completed  
For the Year Ended December 31, 2006

Completion of Prior Years Contracts			Contract Price			Prior to December 31, 2005				During the Year Ended December 31, 2006				Over (Under) Billed
Job#	Job Name	Final Contract	Cost of Construction	Gross Profit	Revenue Earned	Cost of Construction	Gross Profit/Loss	Revenue Earned	Cost of Construction	Gross Profit/Loss	Billed			
5025 Sinclair Oil - OSBL project		\$ 1,472,758	\$ 983,886	\$ 518,872	\$ 874,814	\$ 448,581	\$ 426,223	\$ 597,944	\$ 507,285	\$ 80,659	\$ 1,472,758	\$ 0		
5027 Sinclair Oil - BRU project		634,753	737,326	(102,573)	503,014	523,115	29,899	81,739	214,211	(132,472)	634,753	0		
5032 Sinclair Oil - CCR project		2,508,227	1,878,583	629,644	1,120,410	493,708	626,702	1,387,817	1,384,875	2,942	2,508,227	0		
5033 NAS JRB Library project		280,232	434,412	(154,180)	30,158	30,158	0	250,074	404,254	(154,180)	280,232	0		
				0	0	0	0	0	0	0	0	0		
				0				0	0	0		0		
Total Contracts completed from prior years			\$ 4,895,970	\$ 4,004,207	\$ 891,763	\$ 2,578,397	\$ 1,493,572	\$ 1,084,825	\$ 2,317,573	\$ 2,510,635	\$ (193,062)	\$ 4,895,970	\$ 0	
5034 AFF Concrete Demo project		303,420	328,626	(25,206)	0	0	0	303,420	328,626	(25,206)	303,420	0		
6043 AFF Concrete Foundations project		1,982,533	1,513,485	469,048	0	0	0	1,982,533	1,513,485	469,048	1,982,533	0		
6045 Sinclair Oil Service Contract		23,224	13,823	9,401	0	0	0	23,224	13,823	9,401	23,224	0		
Other work		50,735	40,250	10,485	0	0	0	50,735	40,250	10,485	50,735	0		
				0	0	0	0	0	0	0	0	0		
Total Contracts Awarded and Completed for fiscal year ended December 31, 2005			\$ 2,358,912	\$ 1,896,104	\$ 463,720	\$ 0	\$ 0	\$ 2,358,912	\$ 1,896,104	\$ 463,728	\$ 2,358,912	\$ 0		
Total Revenue and Cost of Construction (Completed during the year)			\$ 7,255,882	\$ 5,800,391	\$ 1,355,491	\$ 2,578,397	\$ 1,493,572	\$ 1,084,825	\$ 4,677,485	\$ 4,405,019	\$ 270,686	\$ 7,255,882	\$ 0	

See Accountants Review Report

Schedule 1b

Young Construction & Paving, L.L.C.  
 Contracts in Progress  
 For the Year Ended December 31, 2006

Job Name	Contract Price		Prior to December 31, 2005				During the Year Ended December 31, 2006				Under (Over) Billed	Future Work (Budget)		Profit (Loss)
	Contract Price Including	Cost of Construction	Gross Profit	Revenue Earned	Cost of Construction	Gross Profit/Loss	Revenue Earned	Cost of Construction	Gross Profit/Loss	Progress Billied to Date		Remaining	to Complete	
OS Concrete Contract Hanger proj.	\$ 1,724,423	\$ 1,403,000	\$ 301,423	\$ 0	\$ 0	\$ 260,503	\$ 877,275	\$ 418,772	\$ 260,503	\$ 877,275	\$ 0	\$ 1,047,146	\$ 1,008,236	\$ 40,920
AFF Concrete Flatwork project	2,246,817	1,948,600	298,317	0	0	186,177	1,428,424	1,238,347	186,177	1,372,199	83,225	821,268	712,583	109,140
Total	\$ 3,971,240	\$ 3,371,600	\$ 600,740	\$ 0	\$ 0	\$ 449,680	\$ 2,102,699	\$ 1,653,619	\$ 449,680	\$ 2,449,474	\$ 83,225	\$ 1,868,414	\$ 1,718,481	\$ 150,090
Completion of Prior Years Contracts	\$ 7,265,882	\$ 5,800,391	\$ 1,365,491	\$ 2,578,397	\$ 1,453,572	\$ 1,084,826	\$ 4,877,485	\$ 4,008,919	\$ 270,686	\$ 7,365,842	\$ 0	\$ 0	\$ 0	\$ 0
Work completed on current years contracts	3,971,240	3,371,600	699,740	0	0	0	2,102,699	1,653,619	449,680	2,449,474	83,225	1,868,414	1,718,481	150,090
Total work completed for year ended December 31, 06	\$ 11,227,122	\$ 9,271,991	\$ 1,965,231	\$ 2,578,397	\$ 1,453,572	\$ 1,084,825	\$ 6,700,184	\$ 5,069,838	\$ 720,348	\$ 9,305,316	\$ 83,225	\$ 1,868,414	\$ 1,718,481	\$ 150,090

See Accountants Review Report

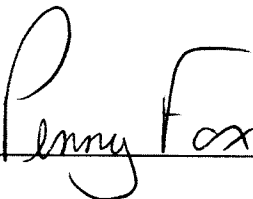
**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served upon the following:

Atty. John E. Sebastian  
Atty. Albert L. Chollet, III  
Hinshaw & Culbertson, LLP  
222 No. LaSalle St., Suite 300  
Chicago, IL 60601

Atty. James M. Allen  
Hinshaw & Culbertson, LLP  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105

by depositing the same in the United States Mails, postage prepaid, addressed as above, at Rockford, Illinois on February 15, 2008.

  
\_\_\_\_\_

Subscribed and sworn to before  
me on February 15, 2008.

  
\_\_\_\_\_  
Notary Public

ROBERT A. FREDRICKSON, #412  
Reno & Zahm LLP  
2902 McFarland Road, Suite 400  
Rockford, IL 61107  
815/987-4050